

FILED
JAN 22 2014
CLERK'S OFFICE
DETROIT

United States of America

vs.

Case No. 13CR20052-1

THE HONORABLE JOHN CORBETT O'MEARA, Presiding

Diane Hathaway, Defendant

MOTION FOR MODIFICATION OF SENTENCE
TITLE 28 USC Section 2255

Now comes Defendant, Diane Hathaway, in pro per, and for and in support of her Motion for Modification of Sentence states the following:

Defendant was sentenced by this Honorable Court on May 28, 2013 following a plea of guilty to one count of bank fraud. She was sentenced to 12 months and 1 day incarceration plus 2 years probation. No appeal or previous post sentence motions have been filed in this matter.

GROUND ONE: Service of Defendant's sentence is unconstitutional as applied and denies her equal protection of the law. Per the Second Chance Act of 2008, The Bureau of Prisons (BOP) must ensure that each prisoner is considered for Residential Reentry Center (RRC, also know as halfway house) placement for up to 12 months, to afford the prisoner a reasonable opportunity to adjust and prepare for reentry into the community. In addition, the act also allows the BOP to place a prisoner in home detention (home confinement) for only 10 % of her sentence up to 6 months, whichever is less.

Defendant's BOP unit team has refused to even consider RRC placement. Defendant is being denied equal protection of the law as she is not being considered for RRC placement in a halfway house due to safety concerns arising from her former position as a sentencing judge in Michigan. RRCs in Michigan maintain beds for both state and federal inmates. The likelihood that an inmate being housed in these facilities, having been sentenced by Defendant (or a related Hathaway judge) is great, placing Defendant's safety at risk. Due to these safety concerns, Defendant was told on November 12, 2013 by her BOP unit team that she would not be considered for RRC placement. She was now advised that she would be referred only for home confinement which can only be 10% of her sentence (See Exhibit A).

Safety is a very relevant consideration. Immediately following Defendant's sentencing, she was followed from the courthouse by a woman yelling "Karma!" repeatedly, along with other threatening remarks. This woman spoke to the media and indicated that Defendant was her divorce judge. In fact, another Hathaway judge actually presided and rendered an adverse decision.

Defendant's situation is extremely unusual. Nearly every other inmate in the BOP is considered for RRC placement near home and community for up to 12 months as required by law. Due to the BOP's denial to consider RRC placement, Defendant is forced to remain nearly 500 miles from her home until about a month prior to her good conduct time release date. This serves as an undue hardship for Defendant and her family. Therefore, Defendant is requesting that this Honorable Court consider additional home confinement to allow her a period to adjust and reintegrate into her community and home just as the other inmates are allowed to do. There is no other remedy available within the BOP system.

It is possible to correct this injustice by restructuring Defendant's sentence pursuant to USSG 5C1.1(d)(1) and (2) by imposing an imprisonment that includes a term of supervised release with a condition that substitutes home detention, provided that at least half of the minimum term is satisfied by imprisonment. Should Defendant's sentence be split to 6 months and 1 day incarceration plus 6 months home detention, half of her minimum term would have been served by imprisonment and the rest would be satisfied by home detention. Defendant would then be released from imprisonment on February 13, 2014 and begin her home detention.

GROUND TWO: Post Conviction Rehabilitation

As Defendant is before this Honorable Court, it is relevant to present matters concerning post conviction rehabilitation. Defendant has earned 14 certificates while being incarcerated for approximately 5 months. (See Exhibits B-O). Many of them are for rehabilitation programming. She has also maintained clear conduct. Under 18 USC 3742(e), Defendant may be considered for reduction of sentence per US v. Pepper (131 S.Ct. 1229, 179 L.Ed.2d 196). The downward variance of Pepper was based on Defendant's lack of a history of violence and post sentencing rehabilitation, made possible by US v Booker (1255 S.Ct. 736, 160 L.Ed.2d 621), which rendered the United States Sentencing Guidelines advisory as opposed to mandatory.

A sentence reduction based on post sentencing rehabilitation can hardly be said to be inconsistent with the policies underlying an award of good time credit under 18 USC 3624(b), because the two serve distinctly different penological interests. An award of good time credit by the BOP does not affect the length of the court-imposed sentence. Rather, it is an

administrative reward to provide an incentive for prisoners to comply with institutional disciplinary regulations. Such credits may be revoked at any time before the prisoner's release. In contrast, a court's imposition of a reduced sentence based on post-conviction rehabilitation changes the very term of imprisonment and recognizes that the Defendant's conduct since her initial sentencing warrants a less severe punishment.

Further, the factors to be considered in imposing a sentence per 18 USC 3553 have been met in Defendant's case, including her payment of restitution.

WHEREFORE, in light of all of the foregoing, Defendant hereby respectfully prays that this Honorable Court split her sentence so that the last six months may be served on home detention or alternatively, reduce her sentence by 6 months in light of her post conviction rehabilitation programming.

Dated January 9, 2014

Respectfully submitted,

Diane Hathaway
Diane Hathaway, Defendant

Certificate of Service

The foregoing was filed by U.S. Regular Mail, on this NINTH day of JANUARY, 2014 by the Defendant, Diane Hathaway with the Honorable Judge John Corbett O'Meara and U.S. Attorney Daniel Lemisch at

The Honorable John Corbett O'Meara
200 E. Liberty Street
Suite 400
Ann Arbor, Michigan 48104
and

U.S. Attorney Daniel Lemisch
211 W. Fort Street
Suite 2001
Detroit, Michigan 48226

Signature *Diane Hathaway*

and also to:

The court clerk - Eastern District
231 W. Lafayette Blvd.
Detroit, Michigan 48226

on January 17, 2014

Diane Hathaway

Department of Justice

INMATE SKILLS DEVELOPMENT PLAN

Federal Bureau of Prisons

PROGRAM REVIEW: 11-12-2013

DAILY LIVING

	⊕ possesses public transportation skills and has access to public transportation
✓	IDENTIFICATION ⊕ has photo identification ⊕ has birth certification ⊕ has social security card
✓	HOUSING ⊕ established housing year prior to incarceration ① established housing: owned or mortgage ① established housing: lived with family ① established housing: non-publicly assisted ⊕ established housing not in a high crime neighborhood <hr/> ⊕ housing upon release ① not applicable - supervision district a relocation ① anticipated housing plan NOT approved by USPO(s) ① no concerns with anticipated housing plan
?	RESIDENTIAL REENTRY CENTER (RRC) PLACEMENT ① recommended or ordered for RRC placement ① date referral completed: 10-23-2013 ① recommended date: 05-22-2014
✓	FAMILY CARE ⊕ not responsible for obtaining child care for any dependent children upon release ⊕ not responsible for obtaining elder care for any dependent(s) upon release ⊕ not responsible for obtaining any other special services for dependents upon release
Progress and Goals	
Previous TEAM 08-28-2013 Reviewed under the "Second Chance Act". RRC recommended based on; Bed space being available, placement is of sufficient duration to provide successful integration into the community, will allow her to secure employment, establish a residence, and maintain community ties. Short Term Goal: Secure a birth certificate for release purposes by (11-13).	
* Current TEAM Inmate Hathaway's release plan is being submitted for review and approval. If her plan is approved she will be referred for home confinement to begin on or after (05-22-14). Completed RPP Money Management on September 12, 2013 with 4 credit hours.	

EXHIBIT A

THIS DOCUMENT REFLECTS BOP TEAM'S DECISION TO REFER DEFENDANT FOR HALFWAY HOUSE PLACEMENT ON 8-28-2013. PLACEMENT COULD BE UP TO 12 MONTHS PER THE SECOND CHANCE ACT OF 2008. HER CURRENT TEAM RESCINDED THAT DECISION ^{ON} 11-12-2013 DUE TO SAFETY CONCERNS AND SUBMITTED REQUEST FOR APPROVAL FOR ONLY HOME DETENTION. THIS AMOUNTS TO

Certificate of Achievement

This certifies that


Diane Hathaway

has satisfactorily completed

ACE PowerPoint

Consisting of 4 Hours of Training

This certificate is hereby issued this *30th* day of *October*, 2013


Terri Martin, Educ. Spec.


Mrs. Joy Bowling, S.O.E

Certificate of Achievement

This certifies that

Diane Hathaway

has satisfactorily completed

Basic Parenting

Consisting of 2 hours of training

This certificate is hereby issued this 12th day of November, 2013

Charlotte Melton

Charlotte Melton, Instructor

Sherri Wheeler
Sherri Wheeler, Education Tech

Certificate of Achievement

This certifies that

Diane Hathaway

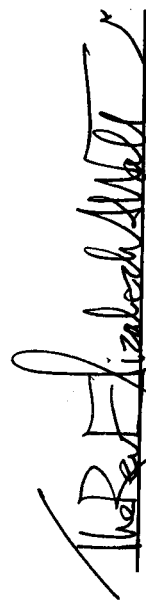
48069-039

has satisfactorily completed

Church of Christ Study

Consisting of 20 Hours of Training

This certificate is hereby issued this 23rd day of November, 20 13



The Rev. Elizabeth A. Walker, Chaplain

Drug Education Course Certificate of Completion

Presented to:

Diane Hathaway

*This the 9th day of October, 2013
Federal Prison Camp
Alderson, West Virginia*

P. Sea

P. Sea

Drug Treatment Specialist

John Alderson Recreation

Certificate of Achievement

This Certifies That

Diane Hathaway

has satisfactorily completed

Intro to Fitness

Consisting of 5 Hours of Training

Given at Alderson, MA, this 21st day of November, 2013



D. Morgan

D. Morgan, Rec. Spec.

Certificate of Achievement

This certifies that

Diane Hathaway
48069-039

has satisfactorily completed

Jewish Study

Consisting of 20 Hours of Training

This certificate is hereby issued this 23rd day of November, 2013



The Rev. Elizabeth A. Walker, Chaplain

Certificate of Achievement

This certifies that

Diane Hathaway

Register # 48069-039

has satisfactorily completed

The Poetry & Creative Writing Workshop

Religious Services Department

Consisting of 2.5 Hours of Training

This certificate is hereby issued this 26th day of November, 2013


The Rev. Elizabeth A. Walker, Chaplain

Mr Alderson Recreation

Certificate of Achievement

This Certifies That

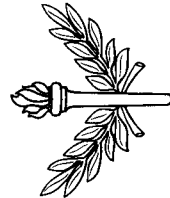
Diane Hathaway

has satisfactorily completed

Sunset Yoga

Consisting of 16 Hours of Training

Given at Alderson, WA, this 4th day of November, 2013



D. Pilsbn, Rec. Spec.

WALDERSON RECREATION

Certificate of Achievement

This Certifies That

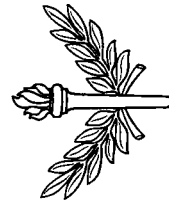
Diane Hathaway

has satisfactorily completed

Sweating to the Oldies

Consisting of 16 Hours of Training

Given at Alderson, WVA, this 30th day of October, 2013



D. Pilson, Rec. Specialist

Certificate of Achievement

This certifies that

Diane Hathaway

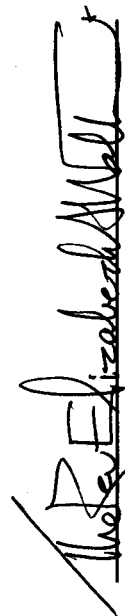
48069-039

has satisfactorily completed

Women's Aglow

Consisting of 20 Hours of Training

This certificate is hereby issued this 23rd day of November, 2013


The Rev. Elizabeth A. Walker, Chaplain

THU Alderson Recreation

Certificate of Achievement

This Certifies That

Diane Hathaway

has satisfactorily completed

Yoga Intermediate

Consisting of 8 Hours of Training

Given at Alderson, WVA, this 27th day of October, 2013



D. Pilson, Rec. Specialist

WPA Alderson Recreation

Certificate of Achievement

This Certifies That

DIANE HATHAWAY

has satisfactorily completed

BRISKWALKING 500 MILES

Consisting of 50 Hours of Training

Given at Alderson, WVA, this 5TH day of DECEMBER, 2013



D. PILSON, REC. SPEC.

Frank Alderson Recreation

Certificate of Achievement

This Certifies That

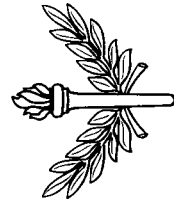
DIANE HATHAWAY

has satisfactorily completed

NUTRITION

Consisting of 3 Hours of Training

Given at Alderson, WVA, this 19 day of DECEMBER, 2013



D Morgan

D. MORGAN REC. SPEC.

THU Alderson Recreation

Certificate of Achievement

This Certifies That

DIANE HATHAWAY

has satisfactorily completed

BRISKWALKING 300 MILES

Consisting of 75 Hours of Training

Given at Alderson, WVA, this 7TH day of NOVEMBER, 2013



D. PILSON, REC. SPEC.

REG. # 48069-039 A-3
FEDERAL PRISON CAMP
P.O. BOX A
ALDENSON, WV 24910

48069-039
Cl Clerk - Eastern District
231 W Lafayette BLVD
Detroit, MI 48226
United States

